

STATE BOARD OF EDUCATION STANDARDS

PIERRE, SOUTH DAKOTA

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IN THE MATTER OF)	PETITION PURSUANT TO SDCL 1-26-13
ARSD 24:28:01:01(54),)	TO REPEAL ARSD 24:28:01(54)
ARSD 24:28:06:01, and)	and AMEND ARSD 24:28:06:01 and
ARSD 24:08:01(45))	AMEND ARSD 24:28:01:01(45)

The Board of Directors of the South Dakota Council of School Attorneys (SD COSA) respectfully petitions the State Board of Education Standards pursuant to SDCL 1-26-13 to repeal ARSD 24:28:01:01(54), amend ARSD 24:28:06:01, and amend ARSD 24:08:01(45).

SDCL 1-26-13 states as follows:

SDCL 1-26-13. Petition for rules--Denial or initiation of proceedings--Copies to Interim Rules Committee and director. An interested person, other than an inmate as defined in § 1-15-20.1, may petition an agency requesting the promulgation, amendment, or repeal of a rule. The petition shall contain the text or substance of any new rule or amendment sought, the identification of any rule sought to be repealed, reasons for the proposal, and the name and address of the petitioner. Within thirty days after submission of a petition, the agency either shall deny the petition in writing (stating its reasons for the denials) or shall initiate rule-making proceedings in accordance with § 1-26-4. The agency shall serve a copy of any petitions and denials on the members of the Interim Rules Review Committee and the director of the Legislative Research Council.

New regulations, effective December 10, 2020, added the definition of "long-term substitute," and inserted the phrase "long-term substitute" in an amendment to the regulation which identifies when a teaching certificate is required.

24:28:01:01(54) "Long-term substitute" means an individual who is acting as the teacher of record for no more than six weeks when the teacher is on a temporary [misspelled in the regulation] leave of absence and intends to return to the classroom during the school year.

24:28:06:01. Certificate for teaching assignment required. A teacher of record not including a long-term substitute teacher, in grades kindergarten to 12 or early childhood special education in a public or department-accredited school shall hold a certificate valid for the positions to which the teacher is assigned.

Both regulations cite SDCL 13-1-12.1 and SDCL 13-42-3 as the General Authority for the regulations. SDCL 13-1-12.1 says the Board of Education Standards shall promulgate to establish standards for preparation of certified personnel. SDCL 13-42-3 states the Board of Education Standards shall promulgate rules to establish the requirements and criteria that an applicant shall meet in order to be issued a certificate by the secretary as a teacher, administrator, or other educational professional authorizing the holder of the certificate to accept a position in any elementary or secondary school in the grades and fields specified by the certificate.

Both regulations cite as "Law Implemented" SDCL 13-42-1 through 13-42-4, 13-43-5, and 13-43-5.

1. SDCL 13-42-1 defines (a) "Administrator," as "a superintendent, principal, or other person whose assigned duties require the person to be issued a certificate as an administrator" (SDCL 13-42-1(1)); (b) "Certificate," as "a certificate and endorsements required by the South Dakota Board of Education Standards pursuant to § 13-42-3 for a teacher, administrator, or other educational professional which authorize the certificate holder to work in assigned grades and fields" (SDCL 13-42-1(3)); (c) "Other educational professional," as "an instructor, school service specialist, or other person whose duties require the person to be issued a certificate" (SDCL 13-42-1(5)); and "Teacher," as "a person whose assigned duties require the person to be issued a certificate as a teacher" (SDCL 13-42-1(7)).
2. SDCL 13-42-1.2 states "[n]o person may draw wages as a teacher, administrator, or other educational professional in any public school or other accredited school who does not have a valid certificate."
3. SDCL 13-42-2 was repealed in 2001.
4. SDCL 13-42-3 (also cited as the General Authority, above), again states the Board of Education Standards shall promulgate rules to establish the requirements and criteria that an applicant must meet in order to be issued a certificate by the Secretary which authorizes the certificate holder to accept a position in the grades and fields specified by the certificate.
5. SDCL 13-42-3.1 was repealed in 1989.
6. SDCL 13-42-4 states the authority to issue a certificate is vested in the secretary, and the certificate shall be issued, renewed, or validated to a person who has met the rules and requirements for the certificate as determined by the South Dakota Board of Education Standards.
7. SDCL 13-43-5 states in part that a *teacher* may sign a contract only upon exhibition of a valid certificate.
8. SDCL 13-43-5.1 states "[n]o public school board or other accredited school may employ a person whose certificate as defined in § 13-42-1 is revoked or during the term of a suspension. A revocation or suspension for purposes of this section includes a refusal to issue or renew a certificate."

** The "General Authority" and "Law Implemented" statutes are set forth in full in Appendix 1, attached.

None of the aforementioned statutes reference substitute teachers. Substitute teachers do not come within the definition of "teacher" or "other educational professional." Substitute teachers are not required to have a certificate.

It is respectfully submitted that the South Dakota Legislature has not given the Board of Education Standards and the Department of Education responsibility for and authority over substitute teachers. It is respectfully submitted there was no statutory authority for the State Board of Education Standards to add a regulatory definition, ARSD 24:28:01:01(54), of a "long-term substitute" to the regulations related to Educator Certification, and also no statutory authority to add the reference to a "long-term substitute teacher" in ARSD 24:28:06:01. ARSD 24:28:01:01(54), definition of "long-term substitute, should be repealed, and ARSD 24:28:06:01 should be amended to delete the reference to "long-term substitute teacher."

The SD COSA Board of Directors also respectfully petitions the State Board of Education Standards pursuant to SDCL 1-26-13 to amend ARSD 24:08:01(45). *Regulation* ARSD 24:08:01(45) currently defines "teacher" as follows:

"Teacher" means an individual who completes an approved teacher education program at an accredited institution or completes an alternative certification program, and is issued a certificate."

However, *statute* SDCL 13-42-1(7), defines "teacher as follows:

- (7) "Teacher," a person whose assigned duties require the person to be issued a certificate as a teacher.

It is respectfully submitted that the regulatory definition of "teacher" should be identical to the statutory definition of teacher, and respectfully requests the Board of Education Standards to amend the regulatory definition of teacher to be identical to the statutory definition of teacher.

Pursuant to SDCL 1-26-7.1, Petitioner requests that upon adoption of a rule (deletion and amendments) or upon the rejection of a petition filed pursuant to § 1-26-13, the Department of Education. either prior to adoption or rejection or within thirty days thereafter, to issue a written concise statement of the principal reasons for and against the rule's adoption, incorporating therein its reasons for overruling the considerations urged against the rule's adoption or rejection. SDCL 1-26-7.1 states as follows:

SDCL 1-26-7.1. Agency's statement of reasons for adoption or rejection of rule. Upon adoption of a rule or upon the rejection of a petition filed pursuant to § 1-26-13, an agency, if requested to do so in writing by an interested person either prior to adoption or rejection or within thirty days thereafter, shall issue a written concise statement of the principal reasons for and against the rule's adoption, incorporating therein its reasons for overruling the considerations urged against the rule's adoption or rejection. A copy of the statement shall be served on the members of the Interim Rules Review Committee and the director of the Legislative Research Council.

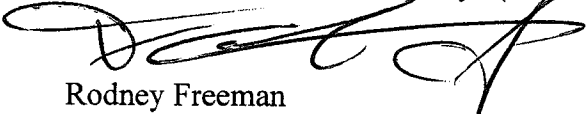
Dated this 17th day of May, 2021.

Respectfully submitted by

Kelsey Parker

Kelsey Parker President

SD Council of School Attorneys (SD COSA)



Rodney Freeman

Director, SD Council of School Attorneys (SD COSA) Board of Directors



Gerry Kaufman

Member, SD Council of School Attorneys (SD COSA)

APPENDIX A

[General Authority and Law Implemented] SDCL 13-1-12.1 Promulgation of rules on classification and accreditation of schools, preparation of certified personnel, eligibility for state aid, career and technical education, and curriculum requirements. The South Dakota Board of Education Standards shall promulgate rules pursuant to chapter 1-26 to establish standards for the classification and accreditation of schools within this state, to establish standards for preparation of certified personnel, to set forth procedures for determining the eligibility of school districts to receive state aid to education funding, to adopt policies and rules necessary to establish standards and procedures for career and technical education, and to establish curriculum requirements for a recommended high school program for all public and nonpublic schools within the state. The recommended high school program shall include a rigorous high school curriculum in both academic and career and technical courses. The requirements of the recommended program shall be aligned to the academic content standards developed pursuant to § 13-3-48 and shall, at a minimum, include the content standards tested pursuant to § 13-3-55.

Nothing in this section authorizes the board to require the use of specifically designated curriculum or methods of instruction.

[General Authority and Law Implemented] SDCL 13-42-3 Certification of educational professionals--Promulgation of Rules. The South Dakota Board of Education Standards shall promulgate rules, pursuant to chapter 1-26, to establish the requirements and criteria that an applicant shall meet in order to be issued a certificate by the secretary as a teacher, administrator, or other educational professional authorizing the holder of the certificate to accept a position in any elementary or secondary school in the grades and fields specified by the certificate. The rules shall specify the duration and the method of renewal, the amount of the fee for issuing the certificate, the application procedures and documentation requirements for certificates, the endorsements to certificates, the requirements for certification, the procedures for denial or nonrenewal of a certificate and disciplinary proceedings and assessment of costs, the procedures for requesting an inactive status and reinstatement, the procedures and costs for reinstatement of an invalid certificate, the definition of inactive certificate status, the procedures for processing applications and issuing certificates for military spouses, the procedures for granting reciprocity for any teacher who is certified to teach in another state and has completed an accredited teacher education program, and other procedures necessary for the administration of certification.

In addition to teacher certificate renewal based on academic coursework, the rules for teacher certificate renewal shall include guidelines and criteria by which an applicant may receive credit toward renewal based on private or public sector experience that was not obtained through academic coursework if the experience is related to the applicant's teaching field. Any change to a rule promulgated pursuant to this section that increases the educational requirements an applicant shall meet to qualify for a certificate shall be preceded by at least two years' notice before the effective date of the change. The two-year notice requirement does not apply to an increase in the application fee, which must comply with §§ 1-26-4.8 and 1-26-6.9.

[Law Implemented] SDCL 13-42-1. Definitions. Terms used in this chapter and §§ 13-43-16 to 13-43-49, inclusive, mean:

- (1) "Administrator," a superintendent, principal, or other person whose assigned duties require the person to be issued a certificate as an administrator;
- (2) "Applicant," an individual who has applied for a certificate, either through an initial application or a renewal application;
- (3) "Certificate," a certificate and endorsements required by the South Dakota Board of Education Standards pursuant to § 13-42-3 for a teacher, administrator, or other educational professional which authorize the certificate holder to work in assigned grades and fields;
- (4) "Department," the South Dakota Department of Education;
- (5) "Other educational professional," an instructor, school service specialist, or other person whose duties require the person to be issued a certificate; [* As substitute teachers are not required to have a certificate, substitute teachers do not come within the definition of "other educational professional."]
- (6) "Secretary," the secretary of the department;
- (7) "Teacher," a person whose assigned duties require the person to be issued a certificate as a teacher.

[Law Implemented] SDCL 13-43-1.2 Certificate required for teachers, administrators, and other educational professionals in schools. No person may draw wages as a teacher, administrator, or other educational professional in any public school or other accredited school who does not have a valid certificate.

[Law Implemented] SDCL 13-42-2. Repealed by SL 2001, ch 86, § 1

[Law Implemented] SDCL 13-42-3. Certification of educational professionals--Promulgation of Rules. The South Dakota Board of Education Standards shall promulgate rules, pursuant to chapter 1-26, to establish the requirements and criteria that an applicant shall meet in order to be issued a certificate by the secretary as a teacher, administrator, or other educational professional authorizing the holder of the certificate to accept a position in any elementary or secondary school in the grades and fields specified by the certificate. The rules shall specify the duration and the method of renewal, the amount of the fee for issuing the certificate, the application procedures and documentation requirements for certificates, the endorsements to certificates, the requirements for certification, the procedures for denial or nonrenewal of a certificate and disciplinary proceedings and assessment of costs, the procedures for requesting an inactive status and reinstatement, the procedures and costs for reinstatement of an invalid certificate, the definition of inactive certificate status, the procedures for processing applications and issuing certificates for military spouses, the procedures for granting reciprocity for any teacher who is certified to teach in another state and has completed an accredited teacher education program, and other procedures necessary for the administration of certification.

In addition to teacher certificate renewal based on academic coursework, the rules for teacher certificate renewal shall include guidelines and criteria by which an applicant may receive credit toward renewal based on private or public sector experience that was not obtained through academic coursework if the experience is related to the applicant's teaching field. Any change to a rule promulgated pursuant to this section that increases the educational requirements an applicant shall meet to qualify for a certificate shall be preceded by at least two years' notice before the effective date of the change. The two-year notice requirement does not apply to an increase in the application fee, which must comply with §§ 1-26-4.8 and 1-26-6.9.

[Law Implemented] SDCL 13-42-3.1. Repealed by SL 1989, ch 30, § 46

[Law Implemented] SDCL 13-42-4. **Issuance of certificates by secretary.** The authority to issue a certificate is vested in the secretary, and the certificate shall be issued, renewed, or validated to a person who has met the rules and requirements for the certificate as determined by the South Dakota Board of Education Standards.

[Law Implemented] SDCL 13-42-4. **Issuance of certificates by secretary.** The authority to issue a certificate is vested in the secretary, and the certificate shall be issued, renewed, or validated to a person who has met the rules and requirements for the certificate as determined by the South Dakota Board of Education Standards.

[Law Implemented] SDCL 13-43-5. **Certificate required before contract signed--Exception when academic training being completed.** A *teacher* may sign a contract only upon exhibition of a valid *certificate* to teach the courses and grades in the school contemplated under the contract and to qualify the school for accreditation. A person is eligible to sign a contract if the person is completing academic training which would qualify the person for issuance or renewal of a teaching certificate. However, if a certificate is not issued prior to the time for performance of the contract, the contract is thereafter void. Prior to making payment under the contract, the validity of the certificate shall be verified through the Department of Education's public online certification database.

[Law Implemented] SDCL 13-43-5.1. **Employment of person with revoked or suspended certificate prohibited.** No public school board or other accredited school may employ a person whose certificate as defined in § 13-42-1 is revoked or during the term of a suspension. A revocation or suspension for purposes of this section includes a refusal to issue or renew a certificate.